

# SIVE | PAGET | RIESEL

MARK A. CHERTOK  
DIRECT DIAL: 646.378.7228  
MCHERTOK@SPRLAW.COM

March 27, 2024


**VIA ECF**

The Honorable Lewis J. Liman  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

The Court hereby GRANTS the parties' motion to proceed under the briefing schedule and with the page limits set forth in this letter.

DATE: March 27, 2024

SO ORDERED.



LEWIS J. LIMAN  
United States District Judge

**Re: *Chan v. U.S. Dep't of Transp.*, No. 23 Civ. 10365 (S.D.N.Y.) (LJL); *New Yorkers Against Congestion Pricing Tax v. U.S. Dep't of Transp.*, No. 24 Civ. 367 (S.D.N.Y.) (LJL); *Mulgrew v. U.S. Dep't of Transp.*, No. 24 Civ. 1644 (S.D.N.Y.) (LJL)**

Dear Judge Liman,

We write on behalf of all parties in the above-referenced matters to: (1) submit the following proposed revised briefing schedule to align the motions to dismiss in *New Yorkers Against Congestion Pricing Tax v. U.S. Department of Transportation*, No. 24 Civ. 367 (S.D.N.Y.) (“*New Yorkers*”) and *Mulgrew v. U.S. Department of Transportation*, No. 24 Civ. 1644 (S.D.N.Y.) (“*Mulgrew*”); and (2) submit the following proposed page limits for briefing for summary judgment in *Chan v. U.S. Department of Transportation*, No. 23 Civ. 10365 (S.D.N.Y.) (“*Chan*”), and motions to dismiss in *New Yorkers* and *Mulgrew*. We do not propose any changes to the current briefing schedule in *Chan*, but we have included those dates below for the sake of completeness.

## **Proposed Schedule**

As noted above, the proposal would align the briefing schedule for the motions to dismiss in *New Yorkers* and *Mulgrew*, which was the original intent of the parties when we submitted our prior joint letter on February 16, 2024. (Because *Mulgrew* was assigned to your honor after March 1, the Court ordered a slightly later schedule for motions in that case (*Mulgrew*, ECF No. 44); however, because the issues raised in *Mulgrew* overlap with those raised in *New Yorkers*, Defendants have already filed opening briefs addressing both cases in accordance with the agreement reflected herein.) This proposed schedule would also make the final briefs regarding the motions to dismiss in *New Yorkers* and *Mulgrew* and the cross-motions for summary judgment in *Chan* all due on April 22, 2024.

The Honorable Lewis J. Liman

March 27, 2024

Page 2 of 3

Filing(s)	Deadline
Amended Complaint in <i>Chan</i> (filed)	February 20, 2024
Administrative Record in <i>Chan</i> (filed)	February 27, 2024
Answers in <i>Chan</i> , except NYSDOT, which is moving to dismiss all claims (filed)	February 27, 2024
Plaintiffs' Motion for Summary Judgment in <i>Chan</i> (filed)	March 18, 2024
Defendants' Motions to Dismiss in <i>New Yorkers</i> and <i>Mulgrew</i> (filed)	March 18, 2024
NYSDOT's Motion to Dismiss in <i>New Yorkers</i> (filed)	March 18, 2024
Defendants' Cross-Motions for Summary Judgment and Opposition to Plaintiffs' Motion for Summary Judgment in <i>Chan</i>	April 1, 2024
NYSDOT's Motion to Dismiss in <i>Chan</i>	April 1, 2024
Plaintiffs' Opposition to Defendants' Motions to Dismiss in <i>New Yorkers</i> and <i>Mulgrew</i>	April 5, 2024
Plaintiffs' Reply in Support of Motion for Summary Judgment and Opposition to Defendants' Cross-Motions for Summary Judgment in <i>Chan</i>	April 15, 2024
Plaintiffs' Opposition to NYSDOT's Motion to Dismiss in <i>Chan</i>	April 15, 2024
Defendants' Reply in Support of Cross-Motions for Summary Judgment in <i>Chan</i>	April 22, 2024
NYSDOT's Reply in Support of Motion to Dismiss in <i>Chan</i>	April 22, 2024
Defendants' Reply in Support of Motions to Dismiss in <i>New Yorkers</i> and <i>Mulgrew</i>	April 22, 2024

### Proposed Page Limits

The parties propose the following page limits for briefing for summary judgment in *Chan* and motions to dismiss in *New Yorkers* and *Mulgrew*. The parties have agreed to extend reasonable courtesies to one another to adjust these lengths based on unanticipated need.

<b><i>Chan</i>: Cross-Motions for Summary Judgment</b>	
Plaintiffs' Motion for Summary Judgment	55 pages
Federal Defendants' Cross-Motion for Summary Judgment and Opposition to Plaintiffs' Motion for Summary Judgment	55 pages
Non-Federal Defendants' Joint Cross-Motion for Summary Judgment and Opposition to Plaintiffs' Motion for Summary Judgment	55 pages

The Honorable Lewis J. Liman  
 March 27, 2024  
 Page 3 of 3

Plaintiffs' Reply in Support of Motion for Summary Judgment and Opposition to Defendants' Cross-Motions for Summary Judgment	35 pages
Federal Defendants' Reply in Support of Cross-Motions for Summary Judgment	30 pages
Non-Federal Defendants' Joint Reply in Support of Cross-Motions for Summary Judgment	30 pages
<b><i>New Yorkers and Mulgrew: Motions to Dismiss</i></b>	
NYSDOT's Motion to Dismiss Both Actions on Eleventh Amendment Grounds	25 pages
Federal Defendants' Motion to Dismiss in <i>New Yorkers and Mulgrew</i> <sup>1</sup>	25 pages
Non-Federal Defendants' Motion Dismiss in <i>New Yorkers and Mulgrew</i>	25 pages
<i>Mulgrew</i> Plaintiffs' Omnibus Opposition to All Motions to Dismiss	40 pages
<i>New Yorkers</i> Plaintiffs' Omnibus Opposition to All Motions to Dismiss	40 pages
NYSDOT's Reply in Support of Motion to Dismiss	12 pages
Federal Defendants' Reply in Support of Motion to Dismiss	10 pages
Non-Federal Defendants' Reply in Support of Motion to Dismiss	15 pages

The parties appreciate the Court's consideration of these matters.

Respectfully submitted,

/s/ Mark A. Chertok

Mark A. Chertok

Elizabeth Knauer

Sive, Paget & Riesel, P.C.

560 Lexington Ave., 15th Floor

(646) 378-7228 / (646) 378-7272

mchertok@sprlaw.com

eknauer@sprlaw.com

<sup>1</sup> The Federal Defendants' Motion to Dismiss also addresses Plaintiffs' failure-to-supplement claims. The other Defendants' joint Motion to Dismiss does not address that issue based on the non-Federal parties' agreement to defer litigation of those claims until the instant motions are decided, recognizing that the Federal Defendants' Motion may dispose of those claims. However, the non-Federal Defendants will respond to arguments on this issue in their summary judgment briefs in *Chan*.